IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1952

No. 786-43

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,
PETITIONERS,

Vs.

LEDBETTER ERECTION COMPANY, INC.

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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October Term, 1951

No. 736

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,

PETITIONERS,

Vs.

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BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The statement of the case contained in the brief of Petitioners contains so many inaccuracies and omissions that we deem it necessary to make a complete statement of the case.

The Petitioners pray for a writ of certiorari to review the judgment of the Supreme Court of Alabama affirming an interlocutory order of the Circuit Court of Montgomery County, Alabama, refusing to dissolve a temporary injunction. There has been no final decree in the case.

The Complainant below, Ledbetter Erection Company, Inc., filed in the Circuit Court of Montgomery County, Alabama, its duly verified complaint for an injunction (Rec. 2-9). The complaint alleged that Bear Brothers, Inc., entered into a contract with Montgomery Towers, Inc., for the erection of a multi-story apartment house in Montgomery. Ledbetter Erection Company, Inc., entered into a sub-contract for the erection of all the structural steel necessary. Ledbetter Erec-

tion Company, Inc., had for many years, had a union shop contract with the International Association of Bridge Structural and Ornamental Iron Workers and there was no labor dispute between Ledbetter Erection Company, Inc., and this union or any of its employees (Rec. 4). The complaint further alleged that employees of Bear Brothers, Inc., were not organized as union labor, that there was no existing labor dispute between Bear Brothers, Inc. and its employees; and that no labor organization had been certified as the representatives of the employees of Bear Brothers, Inc. (Rec. 3). The petitioner, Montgomery Building and Construction Trades Council, seeking to force Bear Brothers, Inc., to bargain with them as a labor organization, which had not been certified as representative of such employees, placed a picket line across the entrances to the property on which such building was being constructed. Ledbetter Erection Company's union shop employees were not willing to cross this picket line.

The Bill further alleged (Rec. 7) that the Petitioner, Montgomery Building and Construction Trades Council knew of the union shop contract of Ledbetter Erection Company, Inc., and knew that its employees would refuse to cross the picket line; that the action of Montgomery Building and Construction Trades Council in unlawfully establishing and maintaining the picket line impaired the contract between Ledbetter Erection Company, Inc., and the International Association of Bridge Structural and Ornamental Iron Workers, was an unlawful interference with Ledbetter Erection Company's right to perform its contract with Bear Brothers, Inc., and specifically alleged that it was a combination or conspiracy for the purpose of hindering, delaying or preventing Ledbetter Erection Company, Inc., from carrying on a lawful business which was a violation of Section 54, Title 14 of the Code of Alabama of 1940, and was a violation of Title 14, Section 57 of the Code of Alabama of 1940 (Rec. 7).

The complaint further alleged that the action of Montgomery Building and Construction Trades Council was a violation

of Section 8 (b) (4) of the National Labor Relations Act, as amended, and induced or encouraged the employees of Ledbetter Erection Company, Inc., to engage in a concerted refusal to perform services for the object of forcing or requiring another employer to recognize or bargain with such labor organization as the representative of Bear Brothers, Inc., employees, where such labor organization has not been certified as a representative of such employees (R. 5). The bill contained appropriate averments of irreparable injury.

Under the Alabama practice, upon consideration of the sworn bill of complaint, a temporary writ of injunction was issued upon Complainant entering into bond as required by law. (R. 9.) This injunction **was not issued in 1951**, as stated in petition, but was issued on **November 20, 1950.** (R. 10.) On December 4, 1950, the Petitioner, Montgomery Building and Construction Trades Council, filed its answer and motion to dissolve the injunction. (R. 12). The only reference to the National Labor Relations Act contained in the motion to dissolve was ground 27 (R. 14), that the complainant had an adequate remedy for damages under Section 10 (a) of said Act. Paragraphs 9 and 11 of the answer (R. 17) both alleged that the National Labor Relations Board would have no jurisdiction over that job and that the union was not required to be certified as the representative of Bear Brothers, Inc., employees since they were not engaged in interstate commerce. At the hearing on December 18, 1950, the Montgomery Building and Construction Trades Council struck the previous grounds of the motion to dissolve and added new grounds, 28 to 39. The basis of this motion to dissolve was that the State court was without jurisdiction of the acts complained of in the complaint and that the sole and exclusive remedy was before the National Labor Relations Board. Petitioner also withdrew its answer (R. 33). The motion to dissolve was then submitted on the affidavits filed by both parties. The only references to interstate commerce in any of these affidavits are found in the affidavits of Fred C. Bear (R. 22) and S. M. Walker (R. 30). According to Bear's affidavit a great majority

of the materials used on that job would necessarily move in interstate commerce; but the amount thereof was not specified. According to Walker's affidavit the picket line prevented the use of an expensive crane costing some $25,000.00 and if the picket line was resumed other jobs including jobs out of the State of Alabama would suffer because of the loss of the use of the crane while it was immobilized on this job.

On **December 21, 1950,** the motion to dissolve the temporary injunction was denied. (R. 33.) **No appeal was taken** from the order of November 20, 1950, issuing the temporary writ of injunction; but on January 12, 1951, the Respondents below appealed to the Supreme Court of Alabama from the interlocutory order refusing to dissolve the temporary injunction. (R. 36). Appeal from such interlocutory order is specifically permitted by Alabama Statute, Title 7, Section 757, Code of Alabama of 1940. On **June 28, 1951,** the Supreme Court of Alabama, all of the Justices concurring, affirmed the interlocutory decree. In this opinion (R. 53) the Supreme Court of Alabama reserved consideration of the principle to be applied where picketing for an unlawful purpose impeded the flow of interstate commerce and when the administrative remedy was adequate.

Application for rehearing was duly filed on **July 10, 1951,** and overruled on **January 10, 1952.** (R. 57.) A second application for rehearing was filed on January 21, 1952, in the face of Rule 38 of Practice in the Supreme Court of Alabama providing that ". . . no second application for rehearing shall be received or filed in any case". This second application for rehearing was overruled on March 6, 1952. (R. 58). The petition for writ of certiorari was filed in this Court on April 25, 1952, **more than ninety days** after the denial of the original application for rehearing.

QUESTIONS PRESENTED

1. Whether this Court should issue a writ of certiorari to review the action of the Supreme Court of Alabama affirming

an interlocutory decree where the cause remains pending in the State court for further action which may or may not involve a federal question.

2. Whether a petition for writ of certiorari filed more than ninety days after the denial of the only application for rehearing permitted under the Rules of Practice of the Supreme Court of Alabama is timely filed.

3. Whether the Labor Management Relations Act of 1947 withdrew the jurisdiction previously existing in the State courts to prevent irreparable injury by picketing for an unlawful purpose.

STATUTES INVOLVED

The pertinent Alabama statutes, Title 26, Section 383, Title 14, Sections 54, 57, Code of Alabama of 1940, and Rule 38 of Practice in the Supreme Court of Alabama are set forth in Appendix A hereto attached. The pertinent Federal statutory provisions are 28 U. S. C. 1257 (3); 28 U. S. C. Section 2101; Section 8(b) of the National Labor Relations Act, 29 U. S. C., Section 158, which are likewise set forth in Appendix A hereto attached.

REASONS WRIT SHOULD NOT BE GRANTED

1. The jurisdiction of the Court to review by certiorari the judgments or decrees of a State court is limited by statute to "final judgments or decrees rendered by the highest court of a state in which a decision could be had". The judgment or decree which is here sought to be reviewed is in no sense a final judgment or decree but merely affirmed the action of the lower court on an interlocutory order refusing to dissolve the temporary injunction. It left the whole case to be disposed of upon its merits. In the absence of such final judgment or decree this Court has uniformly refused to review the action of the state court. This exact question was decided in *American Federation of Labor v. Swing*, 312 U. S. 321, 85 L. ed. 855, where this Court said:

". . . Inasmuch as the Supreme Court" (of Illinois) "affirmed the issuance merely of a preliminary injunction, we denied certiorari for want of a final judgment. 309 US 659, 84 L ed 1007, 60 S Ct 514 . . ."

This has been the rule of this Court since *Gibbons v. Ogden*, 6 Wheat 448, 5 L. ed. 302; and is true even where the decree of the State court dissolved the injunction. *Moses v. Mayor, Aldermen and Common Council of the City of Mobile*, 15 Wall 387, 390, 21 L. ed. 176. Petitioner submits that the question of jurisdiction to issue the preliminary injunction has finally and conclusively been adjudicated by the court below. We submit that this is not correct and there has been no such final adjudication. In the answer originally filed by the Petitioner (R. 17), Petitioner denied that interstate commerce was affected and denied that the National Labor Relations Board would have jurisdiction over the operation on said job. The Supreme Court of Alabama withheld decision as to the jurisdiction of the Alabama Court if the flow of interstate commerce were impeded (R. 53). Until these questions have been heard and decided there has been no final adjudication by the Court of Alabama and it is respectfully submitted that certiorari should not be issued to review the case in piecemeal.

On this issue Petitioner cites the cases of *Radio Station WOW v. Johnson*, 326 U. S. 120, 89 L. ed. 2092, and *Republic Natural Gas Company v. State of Oklahoma*, 334 U. S. 62, 92 L. ed. 1212. In the first of these cases the Court held that the decree in question was final within the meaning of Section 237 of the Judicial Code, now Title 28, Section 1257. The Court, however, was careful to point out that where the remaining litigation might raise other Federal questions, to allow review of an intermediate adjudication would offend the decisive objection to fragmentary reviews.

In the *Republic Natural Gas Company* case the case of *Radio Station WOW v. Johnson* was distinguished and it was held in that case that the order of the Corporation Commission of Oklahoma requiring Republic to take gas from Peerless Oil

and Gas Company, affirmed by the Oklahoma Supreme Court, was not a final judgment which could be reviewed. Instances where this Court has entertained an appeal of an order which otherwise might be deemed interlocutory were limited to cases where the controversy had proceeded to a point where the losing party would be irreparably injured if review were unavailing. No reason is suggested wherein the Petitioner in this case would be irreparably injured by a temporary injunction issued more than 18 months ago and no reason is advanced why these proceedings should not await a final determination by the state courts. The State Court may determine that the averments of Petitioner's original answer were correct and that interstate commerce is not affected. There would then be no Federal question involved.

2. Under the Judicial Code, 28 U. S. C. Section 2101, application for writ of certiorari must be filed within ninety days after the entry of the judgment or decree. The judgment or decree of the Supreme Court of Alabama was rendered on June 28, 1951. The decree overruling the application for rehearing was entered on January 10, 1952. Under Rule 38 of the Rules of Practice of the Supreme Court of Alabama no second application for rehearing shall be received or filed in any case. It is respectfully submitted that the action of the Petitioner in filing such second application for rehearing did not extend the time for filing the petition for writ of certiorari.

In the case of *Morse v. United States*, 270 U. S. 151, 70 L. ed. 518, this Court considered a similar rule of the Court of Claims. Rule 90 of the Court of Claims provided:

> ". . . After the court has announced its decision upon such motion no other motion by the same party shall be filed unless by leave of court . . ."

It was held in that case that the filing of a second motion for new trial did not suspend the running of the ninety days within which the application for appeal must have been made.

3. It is respectfully submitted that the decision of the Supreme Court of Alabama is absolutely right.

There is no question that, prior to the passage of the Labor Management Relations Act of 1947, the equity courts of the State of Alabama had the right to protect its residents against irreparable injury by picketing for an unlawful purpose. Ever since the *Thornhill* case, this Court has constantly reiterated:

> "... the power of the State to set the limits of permissible contest open to industrial combatants ..." *International Brotherhood vs. Hanke*, 339 U. S. 469, 94 L. ed. 995.

The picketing in this case is very similar to that involved in the case of *Building Service Employers International Union v. Gazzam*, 339 U. S. 532, 94 L. ed. 1045, in which case this Court upheld an injunction by the State Court in the State of Washington enjoining picketing for the purpose of compelling the employer to coerce his employees to join the picketing union. The picketing in the instant case was carried on by the union for the purpose of preventing the union shop employees of Ledbetter Erection Company from performing their duties and thereby forcing Ledbetter Erection Company to put economic pressure on Bear Brothers, Inc., to coerce their non-union employees to join the Montgomery Building and Construction Trades Council. The public policy of the State of Alabama as expressed in its statutes is that every person shall be free to join or not to join any labor organization and shall be free from force, coercion or intimidation therein. The pertinent parts of the Alabama Statute, Title 26, Section 383, Code of Alabama of 1940, are almost identical with the pertinent part of the Washington statute involved in the *Gazzam* case. The purpose therefore of the picketing here enjoined was just as unlawful an attempt to coerce the employees of Bear Brothers, Inc., as was the purpose of the picketing in the *Gazzam* case, in which case this Court upheld the injunction issued by the State Court.

In fact, the motion to dissolve upon which the case was submitted to the court does not question the fact that the picket-

ing was for an unlawful purpose. The sole basis for the motion to dissolve is that since the Labor Management Relations Act of 1947 made such conduct against the public policy of the United States as well as against that of the State of Alabama, the previous general jurisdiction of the equity courts of Alabama was restricted and no action could be taken by that court. We submit that such a position is not well founded.

In *Kelly v. Washington*, 302 U. S. 1, 10, 82 L. ed. 3, 10, 58 S. Ct. 87, this Court speaking through Mr. Chief Justice Hughes, said:

> "Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. *Minnesota Rate Cases* (Simpson vs. Shepard) 230 U. S. 352, 402, 57 L. ed. 1511, 1542, 33 S. Ct. 729, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. *The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot be reconciled or consistently stand together.' Sinnot v. Davenport*, 22 How. 227, 16 L. ed. 243, 247; Missouri, K. & T. R. Co. v. Haber, 169 U. S. 613, 623, 624, 42 L. ed. 878, 881, 882, 18 S. Ct. 488; Reid v. Colorado, 187 U. S. 137, 148, 47 L. ed. 108, 114, 23 S. Ct. 92; Crossman v. Lurman,

192 U. S. 189, 199, 200, 48 L. ed. 401, 405, 406, 24 S. Ct. 234; Asbell v. Kansas, 209 U. S. 251, 257, 258, 52 L. ed. 778, 781, 782, 28 S. Ct. 485, 14 Anno. Cas. 1101; Missouri P. R. Co. v. Larabee Flour Mills Co. 211 U. S. 612, 623, 53 L. ed. 352, 361, 29 S. Ct. 214; Savage v. Jones, 225 U. S. 501, 533, 56 L. ed. 1182, 1194, 32 S. Ct. 715; Atlantic Coast Line v. Georgia, 234 U. S. 280, 293, 294, 58 L. ed. 1312, 1318, 1319, 34 S. Ct. 829; Carey v. South Dakota, 250 U. S. 118, 122, 63 L. ed. 886, 888, 39 S. Ct. 403; Atchison, T. & S. F. R. Co. v. Railroad Commission, 283 U. S. 380, 392, 393, 75 L. ed. 1128, 1136, 1137, 51 S. Ct. 553; Nintz v. Baldwin, 289 U. S. 346, 350, 77 L. ed. 1245, 1249, 53 S. Ct. 611; Gilvary v. Cuyahoga Valley R. Co. 292 U. S. 57, 78 L. ed. 1123, 54 S. Ct. 573, supra.

"A few illustrations will suffice. In Reid v. Colorado, 187 U. S. 137, 47 L. ed. 108, 23 S. Ct. 92, supra, the question arose with respect to a statute of Colorado aimed at the prevention of the introduction into the State of diseased animals. One who had been convicted of its violation contended that the subject of the transportation of cattle by one State to another had been so far covered by the Federal statute, known as the Animal Industry Act (May 29, 1884), 23 Stat. at L. 31, Chap. 60, 7 U. S. C. A. § 391), that no enactment by the State upon that subject was permissible. While the congressional act did deal with the subject of the driving or transporting of diseased livestock from one State into another, Congress had gone no further than to make it an offense against the United States for one *knowingly* to take or send from one State to another livestock affected with infectious or communicable disease. The Court concluded that the state statute, requiring a certificate that the cattle were free from disease, irrespective of the shipper's knowledge of the actual condition of the cattle, did not cover the same ground as the Act of Congress and was not inconsistent with it. Id. pp. 149, 150. The principle was thus emphatically stated: 'It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police pow-

ers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that, "in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together."'

'In Savage v. Jones, 225 U. S. 501, 56 L. ed. 1182, 32 S. Ct. 715, supra, the Court held that a statute of Indiana regulating the sale, and requiring a statement of the formula of ingredients, of concentrated commercial food for stock was not repugnant to the Federal Food and Drugs Act of (June 30) 1906 (34 Stat. at L. 768, Chap. 3915, 21 U. S. C. A. § 1). A citizen of Minnesota sought to restrain the enforcement of the Indiana statute with respect to stock food sold and transported in interstate commerce. The Federal act dealt with the subject of adulterated and misbranded foods and defined misbranding. It covered any false or misleading statements as to ingredients but did not require a disclosure of the ingredients. The State statute dealt with that omitted matter. We found that the State requirements could be sustained without impairing the operation of the Federal act as to the matters with which that act dealt. We said: 'But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. *In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State.*'" (Italics supplied).

This principle was reiterated in the case of *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245, @ 253, 93 L. ed. 651, @ 662,

"However, as to coercive tactics in labor controversies,

we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that 'the intention of Congress to exclude the States from exercising their police power must be clearly manifested.'"

In the case of *Algoma Plywood & Veneer Co. v. Wis. Emp. Rel. Bd.*, 336 U. S. 301, 93 L. ed. 691 at 701, the Court in construing Section 8(3) of the National Labor Relations Act, said:

> "Since we would be wholly unjustified therefore in rejecting the legislative interpretation of § 8(3) placed upon it at the time of its enactment, it is not even necessary to invoke the principle that in cases of concurrent power over commerce State law remains effective so long as Congress has not manifested an unambiguous purpose that it should be supplanted."

We respectfully submit that there is nothing in the language of the Labor Management Relations Act of 1947 manifesting a clear and unambiguous purpose that the jurisdiction admittedly existing in the state courts has been supplanted in favor of exclusive jurisdiction in the National Labor Relations Board over acts which are against the public policy of the State. Section 10(A) of the National Labor Relations Act vested in the National Labor Relations Board the exclusive power to prevent any person from engaging in any unfair labor practice listed in Section 8 of the Act. This Section was amended by the Labor Management Relations Act of 1947 by the omission of the clause, "This power shall be exclusive", and the insertion in lieu thereof of the following:

> "10(A) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention *that has been or may be established by agreement, law, or otherwise.*" (Italics supplied)

This language, we submit, does not manifest an unambiguous purpose to supplant the jurisdiction of the state courts, but to the contrary, shows that Congress recognized and did not intend to supersede other means of prevention already established by state law and upheld by the Supreme Court.

Petitioners' position, as we understand it, is that the Labor Management Relations Act, by defining certain acts as unfair labor practices, completely divested the jurisdiction previously recognized as existing in the State courts. Violence on the picket line is made an unfair labor practice under Sec. 8 (b) (1) (a) of the Act. If Petitioners' position were sound, it would follow that local police authorities would have no jurisdiction over violence in connection with a strike. That this is not the correct rule was established by the decision of this Court in *National Labor Relations Board v. International Rice-Milling Company*, 341 U. S. 665, 95 L. ed. 1277. The court there said:

> "In the instant case the violence on the picket line is not material. The Complaint was not based upon that violence as such. To reach it, the complaint more properly would have relied upon § 8 (b) (1) (A) *or would have addressed itself to local authorities.*" (Italics supplied.)

By this language the Court recognized that jurisdiction previously existing in the State courts over violence in the picket line was not affected by the fact that such violence was likewise made an unfair labor practice under Section 8 (b) (1) (A) of the Labor Management Relations Act. We respectfully submit that the previously well recognized power of the State court to enjoin picketing for a purpose contrary to the public policy of the State, ". . . the power of the State to set the limits of permissible contest open to industrial combatants . . .", was not divested by any clear and unambiguous Congressional intent expressed in the Labor Management Relations Act.

CONCLUSION

There is in this case no question as raised in the case of *Amazon Cotton Mill v. Textile Workers Union*, 167 Fed (2d) 183, as to whether the Labor Management Relations Act conferred jurisdiction on the district court to issue injunctions at the request of private parties. There is in this case no question of whether the Labor Management Relations Act repealed the Norris-LaGuardia Act except at the suit of the National Labor Relations Board. There is in this case the fundamental question of our dual system of Government and the necessity of accommodation between the assertions of new federal authority and the functions of the individual states. As was stated in the case of *Bethlehem Steel Company v. N. Y. Labor Board*, 330 U. S. 767, @ 780, 91 L. ed. 1234, @ 1249:

> ". . . Since Congress can, if it chooses, entirely displace the States to the full extent of the far-reaching Commerce Clause, Congress needs no help from generous judicial implications to achieve the supersession of State authority. To construe federal legislation so as not needlessly to forbid pre-existing State authority is to respect our federal system. Any indulgence in construction should be in favor of the States, because Congress can speak with drastic clarity whenever it chooses to assure full federal authority, completely displacing the States."

The Petitioner does not deny that the picketing was for an unlawful purpose. There is serious question whether the National Labor Relations Board would assume jurisdiction in the instant case. See mimeographed release of National Labor Relations Board, dated October 6, 1950 and entitled, "N. L. R. B. Clarifies And Defines Areas In Which It Will and Will Not Exercise Jurisdiction."

The sole claim of the Petitioner is that it had the right to continue an unfair labor practice in violation of the public policy of both the State and of the Federal government during the time necessary for the Board to make preliminary in-

vestigation and decide its election to assume or reject jurisdiction. If the Board should elect jurisdiction it would then be the duty of the Board to secure from the U. S. District Court the same relief of which Petitioner here complains. Under its current practice the National Labor Relations Board could refuse to assume jurisdiction for administrative reasons, since there is involved less than $500,000.00 of inflow of materials in interstate commerce. If the Petitioner's position is sound, the Petitioner could then continue to engage in such unfair labor practice, for the Board would not be obligated to request an injunction, the Norris-LaGuardia Act would prevent the district court from granting the relief, and according to Petitioner's position the State court is powerless to prevent the unlawful act with resultant irreparable injury. We submit that the Labor Management Relations Act of 1947 contains no clear and unambiguous language indicating an intention of Congress to supersede the right of the State court in this respect, and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Title 26, Section 383, Code of Alabama of 1940:

"§ 383. **Freedom to join or refrain from joining labor organization.**—Every person shall be free to join or to refrain from joining any labor organization except as otherwise provided in section 391 of this title, and in the exercise of such freedom shall be free from interference by force, coercion or intimidation, or by threats of force or coercion, or by intimidation of or injury to his family. (1943, p. 256, § 8, appvd. June 29, 1943.)"

Title 14, Section 54, Code of Alabama of 1940:

"§ 54. **Conspiracy, combination or agreement to interfere with or hinder business, unlawful.**—Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Title 14, Section 57, Code of Alabama of 1940:

"§ 57. **Using force or threats against person engaging in lawful occupation.**—Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other person, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor."

Rule 38 of Practice in the Supreme Court of Alabama:

"38. **Rehearings, applications: time of filing.**—All applications for rehearing must be filed with the clerk of the court, accompanied by brief for the applicant and a certificate of counsel, within fifteen days after the rendition of the judgment whether such period extends beyond the term of the court or not; and such application may be passed upon at any

regular or special term of the court. No application shall be received or filed which is not presented in strict compliance with this rule, and no second application shall be received or filed in any case. Without the order of the court or a justice thereof, the pendency of an application for rehearing shall not stay or suspend the execution of the judgment of the court. No appellee can, as matter of right, apply for a rehearing unless brief was filed with the clerk upon the original hearing within fifteen days after submission of the cause containing a certificate that a copy of same was served within said time upon counsel for appellant. An extension of time for filing such brief by any justice upon request of counsel will not suspend this rule so as to entitle the appellee to apply for a rehearing unless a brief was filed within fifteen days as above provided. This rule shall not apply in criminal cases except when the appellant files a brief upon submission of the cause."

28 U. S. C. 1257 (3):

"**§ 1257. State courts; appeal; certiorari**

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

28 U. S. C., Section 2101:

"**§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay**

"(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253 and 2282 of this title, holding un-

constitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

"(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

"(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

"(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

"(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his ap-

plication, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay. June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 1949, c. 139, § 106, 63 Stat. 104."

Section 8(b), National Labor Relations Act, 29 U. S. C., Section 158:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9."